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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF ARIZONA

10 United States of America,
11 Plaintiff,
12 v.
13 Edward Kraemer & Sons, Inc.
14 Defendant.
15

CONSENT DECREE

16 WHEREAS Plaintiff, United States of America, on behalf of the United States
17 Environmental Protection Agency (EPA), has filed a Complaint initiating this action against
18 Edward Kraemer & Sons, Inc. (Kraemer or Defendant) in the United States District Court for
19 the District of Arizona requesting civil penalties and injunctive relief;

20 WHEREAS Plaintiff, United States of America, alleges that Kraemer violated the Clean
21 Air Act (the Act), 42 U.S.C. §§ 7401, *et seq.*, and the federally enforceable Arizona State
22 Implementation Plan (SIP), including Section 310 of the Maricopa County Air Quality
23 Department (MCAQD or the Department) Regulations, by failing to implement work practices
24 required to abate fugitive dust emissions on seventeen (17) separate occasions;

25 WHEREAS EPA issued a Finding and Notice of Violation (NOV) with respect to these
26 allegations on December 10, 2004, and March 28, 2005;

27 WHEREAS Kraemer disputes the violations alleged in the NOVs and the Complaint;

28 WHEREAS this Consent Decree does not constitute an admission of liability by Kraemer;
and

1 WHEREAS the parties have agreed that settlement of the civil judicial claims as alleged
2 in the Complaint is in the public interest and that entry of this Consent Decree without further
3 litigation is the most appropriate way to resolve this action,

4 THEREFORE IT IS ORDERED, ADJUDGED, AND DECREED as follows:

5 **I. JURISDICTION AND PARTIES BOUND**

6 1. This Court has jurisdiction over the subject matter of this action and over the parties
7 pursuant to § 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345 and 1355.
8 Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), (c) and § 1395(a), and § 113(b)
9 of the Act, 42 U.S.C. § 7413(b), because the violations that are the subject of the Complaint in
10 this action took place in Maricopa County, Arizona, and because the Defendant is doing business
11 in this District. The Complaint states claims upon which relief may be granted against Kraemer
12 pursuant to 42 U.S.C. § 7413(b). A notice of commencement of this action has been given to
13 the State of Arizona through the Department in accordance with 113(b) of the Act, 42 U.S.C.
14 § 7413(b). Defendant shall not challenge entry of this Consent Decree or this Court's
15 jurisdiction to enter, enforce, modify or terminate this Consent Decree.

16 2. This Consent Decree shall apply to and be binding upon Defendant, its successors
17 and assigns. It shall also apply to and be binding upon the United States on behalf of the EPA.

18 3. If Defendant merges with or is acquired by a third party, Defendant shall attach a
19 copy of this Consent Decree to any merger or acquisition agreement and shall make performance
20 of the obligations of Defendant under this Consent Decree an obligation of the new entity, in the
21 case of a merger, or the purchaser, in the case of an acquisition. Any such merger or acquisition
22 will not relieve Defendant from the obligations of this Consent Decree. Nothing herein shall
23 preclude Defendant from allowing its successors in interest to perform Defendant's obligations
24 under this Consent Decree. However, Defendant is ultimately responsible for full compliance
25 with the terms of this Consent Decree.
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II. CIVIL PENALTY

4. After entry of this Consent Decree and within ten (10) days of the receipt of the electronic funds transfer procedures described in paragraph 5, Kraemer shall pay a civil penalty of One Hundred Ninety Thousand Dollars (\$190,000.00) to the United States.

5. Payments under this Consent Decree shall be made by electronic funds transfer to the United States Treasury according to current United States electronic funds transfer (EFT) procedures. The United States shall provide a copy of current EFT procedures to Defendant pursuant to section IX (Notification) of this Consent Decree. Concurrently with the EFT, Defendant shall fax notice of payment to the person designated as "point of contact" on the EFT instructions and shall send notice of payment to EPA and the United States Attorney's Office at the addresses listed in section IX (Notification). The notice of payment shall identify:

- i. the date and amount of money transferred;
- ii. the name and address of the transferring bank;
- iii. this case by name;
- iv. the civil action number;
- v. the United States Attorney's Office file number (2005V00342) and DOJ File No. 90-5-2-1-08544;
- vi. this Consent Decree (including date of entry); and
- vii. a description of the reason for the payment, including the paragraph number of this Consent Decree that is most relevant to the payment.

III. DEFINITIONS

6. Definitions for terms used in this Consent Decree are as follows:

- (a) For purposes of this Consent Decree, the "Effective Date" of this Consent Decree is the date of entry of the Consent Decree by the Clerk of the United States District Court for the District of Arizona.
- (b) For purposes of this Consent Decree, "bulk materials" means any material, including but not limited to, earth, rock, silt, sediment, sand, gravel, soil, fill,

1 aggregate less than 2 inches in length or diameter (i.e., aggregate base course
2 (ABC)), dirt, mud, demolition debris, cotton, trash, cinders, pumice, sawdust,
3 feeds, grains, fertilizers, and dry concrete, which are capable of producing
4 fugitive dust.

5 (c) For purposes of this Consent Decree, “carry-out/trackout” means any and all
6 bulk materials that adhere to and agglomerate on the exterior surfaces of motor
7 vehicles, haul trucks, and/or equipment (including tires) and that have fallen
8 onto a paved area accessible to the public.

9 (d) For purposes of this Consent Decree, “disturbed surface area” means a portion
10 of the earth’s surface (or material placed thereupon) which has been physically
11 moved, uncovered, destabilized, or otherwise modified from its undisturbed
12 native condition, thereby increasing the potential for the emission of fugitive
13 dust. An area is considered to be a disturbed surface area until the activity that
14 caused the disturbance has been completed and the disturbed surface area
15 meets the stabilization standards of Section 302 of Maricopa County Air
16 Quality Department Rule 310.

17 (e) For purposes of this Consent Decree, “dust-generating operation” means any
18 activity capable of generating fugitive dust, including but not limited to, land
19 clearing, earthmoving, weed abatement by discing or blading, excavating,
20 construction, demolition, bulk material handling, storage and/or transporting
21 operations, vehicle use and movement, the operation of any outdoor
22 equipment, or unpaved parking lots.

23 (f) For purposes of this Consent Decree, “earthmoving operation” means the use
24 of any equipment for an activity which may generate fugitive dust, such as but
25 not limited to, cutting and filling, grading, leveling, excavating, trenching,
26 loading or unloading of bulk materials, demolishing, blasting, drilling, adding
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1 to or removing bulk materials from open storage piles, back filling, soil
2 mulching, landfill operations, or weed abatement by discing or blading.

3 (g) For purposes of this Consent Decree, “fugitive dust” means the particulate
4 matter, which is not collected by a capture system, which is entrained in the
5 ambient air, and which is caused from human and/or natural activities, such as
6 but not limited to, movement of soil, vehicles, equipment, blasting, and wind.
7 Fugitive dust does not include particulate matter emitted directly from the
8 exhaust of motor vehicles and other internal combustion engines, from
9 portable brazing, soldering, or welding equipment, and from piledrivers, and
10 does not include emissions from process and combustion sources that are
11 subject to other Maricopa County rules.

12 (h) For purposes of this Consent Decree, “gravel pad” means a layer of washed
13 gravel, rock, or crushed rock which is at least one inch or larger in diameter,
14 maintained at the point of intersection of a paved public roadway and a work
15 site entrance to dislodge mud, dirt, and/or debris from the tires of motor
16 vehicles and/or haul trucks, prior to leaving the work site.

17 (i) For purposes of this Consent Decree, “grizzly” means a device (i.e., rails,
18 pipes, or grates) used to dislodge mud, dirt, and/or debris from the tires and
19 undercarriage of motor vehicles and/or haul trucks prior to leaving the work
20 site.

21 (j) For purposes of this Consent Decree, “haul truck” means any fully or partially
22 open-bodied, self-propelled vehicle including any non-motorized attachments,
23 such as but not limited to, trailers or other conveyances which are connected
24 to or propelled by the actual motorized portion of the vehicle used for
25 transporting bulk materials.

26 (k) For purposes of this Consent Decree, “work site” means any property located
27 in Maricopa County, Arizona, upon which any dust-generating operations
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1 and/or earthmoving operations occur and for which Kraemer is the
2 earthmoving/dust control permit holder.

3 **IV. INJUNCTIVE RELIEF**

4 7. In order to abate fugitive dust emissions, Kraemer agrees to the following:

- 5 (a) Kraemer's current managers, field superintendents, project managers, and any
6 other employees whose job responsibilities involve dust-generating
7 operation(s) at Kraemer's work sites in Maricopa County, Arizona, and at least
8 one employee, either the general superintendent or project manager of each
9 current Kraemer subcontractor whose job responsibilities involve soil
10 excavation, grading and/or hauling of bulk materials at Kraemer's work sites
11 in Maricopa County, Arizona, must complete a three-hour dust control course
12 titled, "Dust Control in Maricopa County - Compliance with MCAQD Rule
13 310," that is administered by the Department, within three months of the
14 Effective Date of this Consent Decree, or the first time the Department offers
15 the course, whichever is later. In addition, any new employees hired by
16 Kraemer after the Effective Date of this Consent Decree who are required to
17 complete the dust control course under this subparagraph must complete the
18 course within three months of the date of hire, or the first time the Department
19 offers the course, whichever is later. All current and new employees of
20 Kraemer and/or its subsidiaries who are required to complete the dust control
21 course under this subparagraph, must also complete a refresher dust control
22 course administered by the Department at least once every year after initial
23 training. For each Kraemer subcontractor whose job responsibilities involve
24 soil excavation, grading and/or hauling of bulk materials at Kraemer work sites
25 in Maricopa County, Arizona, that is awarded a contract by Kraemer after the
26 Effective Date of this Consent Decree, at least one employee, either the
27 general superintendent or project manager, must complete a three-hour dust
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1 control course titled, "Dust Control in Maricopa County - Compliance with
2 MCAQD Rule 310," that is administered by the Department, within three
3 months of the award of contract, or the first time the Department offers the
4 course, whichever is later.

5 (b) In any future contract with subcontractors whose job responsibilities will
6 require them to spend all or a portion of their time at Kraemer's work sites in
7 Maricopa County, Arizona, Kraemer shall require compliance with MCAQD
8 Rule 310. Kraemer shall also provide a copy of this Consent Decree to any
9 such subcontractor before he or she commences work at its work site(s) in
10 Maricopa County, Arizona.

11 (c) Kraemer shall provide to EPA certification that all current and new employees
12 of Kraemer and/or its subsidiaries or subcontractors whose job responsibilities
13 involve dust- generating operation(s) at Kraemer's work sites in Maricopa
14 County, Arizona, have been trained as required under section IV, paragraph 7,
15 subparagraph(a) of this Consent Decree. These certifications shall list the
16 names of all employees trained, and for each such employee, the date each
17 employee was hired and the date each employee received the dust control
18 course or refresher course. These certifications shall be due to the EPA every
19 six (6) months from the Effective Date of this Consent Decree. The last
20 certification will be due two (2) years after the Effective Date of this Consent
21 Decree.

22 (d) Within three months of the Effective Date of this Consent Decree, or the first
23 time the Department administers the training course required under section IV,
24 paragraph 7, subparagraph (a), whichever is later, Kraemer will ensure that a
25 qualified Dust Control Monitor is employed at each of its work sites having
26 fifty (50) acres or more of disturbed surface area at any given time. A Dust
27 Control Monitor shall be considered qualified when he/she has: (i) obtained
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1 authorization from Kraemer to conduct routine inspections, recordkeeping, and
2 reporting to ensure all appropriate dust control measures are installed,
3 maintained, and used; (ii) obtained authorization from Kraemer to install,
4 maintain, and use fugitive dust control measures, deploy resources, and shut
5 down or modify activities as needed; (iii) successfully completed the dust
6 training course administered by the Department as required under section IV,
7 paragraph 7, subparagraph (a); and (iv) successfully completed a course that
8 certifies him/her in visual emissions evaluation in accordance with the
9 provisions of EPA Method 9 as specified in 40 C.F.R. Part 60, Appendix A.
10 A Dust Control Monitor shall be present at all times dust-generating and
11 earthmoving activities occur at work sites having fifty (50) acres or more of
12 disturbed surface area. A Dust Control Monitor shall maintain certification in
13 visual emissions evaluation during his/her employment as a Dust Control
14 Monitor. The requirement for a Dust Control Monitor shall lapse when the
15 area of disturbed soil becomes less than fifty (50) acres and the previously
16 disturbed areas have been stabilized in accordance with the requirements of
17 MCAQD Rule 310.

- 18 (e) Kraemer shall ensure that a Dust Control Monitor visits, as least once a day,
19 each work site in Maricopa County, Arizona, where dust-generating and/or
20 earthmoving activities occur for which a dust control permit has been obtained
21 by Kraemer, to ensure that fugitive dust abatement practices are followed. A
22 daily log of such inspections shall be maintained.
- 23 (f) At all exits from its work site(s) to a paved area accessible to the public that
24 are accessed by haul trucks importing and/or exporting bulk materials,
25 Kraemer shall install and maintain in good working order a combination of a
26 gravel pad and grizzly to control and prevent carryout/trackout.
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1 All obligations specified in section IV of this Consent Decree shall cease two (2) years
2 after the Effective Date of this Consent Decree.

3 **V. STIPULATED PENALTIES**

4 8. Except as may be excused under section VII (*Force Majeure*) of this Consent
5 Decree, and for a period of two (2) years from the Effective Date of this Consent Decree,
6 Kraemer shall be liable for stipulated penalties for failure to comply with the requirements of
7 sections II and IV of this Consent Decree as follows:

- 8 (a) For failure to comply with the training requirements of paragraph 7,
9 subparagraph (a) of this Consent Decree, Kraemer shall pay a stipulated
10 penalty of One Thousand Dollars (\$1,000) per quarter.
- 11 (b) For failure to comply with the contract and notification requirements of
12 paragraph 7, subparagraph (b) of this Consent Decree, Kraemer shall pay a
13 stipulated penalty of Five Hundred Dollars (\$500) per occurrence.
- 14 (c) For failure to timely submit a required notice under paragraph 7, subparagraph
15 (c) of this Consent Decree, Kraemer shall pay a stipulated penalty of Five
16 Hundred Dollars (\$500) per occurrence.
- 17 (d) For failure to comply with the requirements of paragraph 7, subparagraph (d)
18 and (e) of this Consent Decree, Kraemer shall pay a stipulated penalty of One
19 Thousand Dollars (\$1,000) per day.
- 20 (e) For failure to install and maintain a combination of a gravel pad and grizzly to
21 control and prevent carryout/trackout as required by paragraph 7, subparagraph
22 (f) of this Consent Decree, Kraemer shall pay a stipulated penalty of One
23 Thousand Dollars (\$1,000) per day.
- 24 (f) Kraemer shall pay a stipulated penalty of One Thousand Dollars (\$1,000) per
25 day for failure to timely pay the civil penalty required by paragraph 4 of this
26 Consent Decree.
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9. All stipulated penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the violation ceases. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree. Any stipulated penalty accruing pursuant to this Section shall be payable on demand and due not later than thirty (30) days from EPA's written demand. Stipulated penalties shall be paid by EFT in the same manner as set forth in paragraph 5. A transmittal letter shall accompany the payment of stipulated penalties to refer to this case by name, civil action number, this Consent Decree (including date of entry), USAO No. 2005V00342, and DOJ File No. 90-5-2-1-08544.

10. If Kraemer fails to pay stipulated penalties owed pursuant to this Consent Decree within thirty (30) days of EPA's written demand, it shall pay interest on the late payment for each day of late payment after the initial thirty (30) day time period. The rate of interest shall be the most recent interest rate determined pursuant to 28 U.S.C. § 1961. If Defendant disputes its obligation to pay part or all of the stipulated penalty, it shall initiate the dispute resolution procedure under section VIII (Dispute Resolution) of this Consent Decree. If Defendant invokes dispute resolution, Defendant shall pay the United States any amount that it does not dispute.

11. Payment of stipulated penalties for violation of this Consent Decree is in addition to the United States' right to seek additional monetary penalties or other relief for the violations for which stipulated penalties were imposed. In addition, the United States reserves its right to pursue any or all relief for any or all violations outside the provisions of this Consent Decree.

VI. RIGHT OF ENTRY

12. EPA and its contractors, consultants and agents shall have authority to enter any Kraemer work site at all reasonable times upon proper presentation of correct credentials. This provision in no way limits or otherwise affects any right of entry held by the EPA pursuant to applicable federal, state or local laws, regulations and permits.

1 **VII. FORCE MAJEURE**

2 13. Defendant's performance of the obligations in paragraph 7, subparagraphs (a)
3 through(f) of this Consent Decree may be excused or delayed to the extent, and for the period
4 of time, that such performance is prevented or delayed by events that constitute a *force majeure*.

5 14. For purposes of this Consent Decree, a *force majeure* is defined as any event arising
6 from causes beyond the control of Defendant, including its contractors, and that cannot be
7 overcome by Defendant's diligent and timely efforts. For purposes of paragraph 7 of this
8 Consent Decree, a wind event, which is defined as an hourly wind speed of greater than 25 mph
9 at the location where earthmoving activity is occurring, shall be considered a *force majeure*
10 event, provided that during such event Kraemer has suspended all earthmoving activity which
11 could otherwise cause fugitive dust to occur, and provided further that prior to such event
12 Kraemer has fully complied with Rule 310 of MCAQD. Economic hardship, normal inclement
13 weather, and increased costs of performance shall not be considered events beyond the
14 reasonable control of Defendant for purposes of determining whether an event is a *force*
15 *majeure*.

16 15. In the event of a *force majeure*, the time for performance of the activity delayed by
17 the *force majeure* shall be extended for the time period of the delay attributable to the *force*
18 *majeure*. The time for performance of any activity dependent on the delayed activity may be
19 similarly extended, except to the extent that the dependent activity can be implemented in a
20 shorter time. EPA shall determine whether dependent activities will be delayed by the *force*
21 *majeure* and whether the time period should be extended for performance of such activities.
22 Defendant shall adopt all reasonable measures to avoid or minimize any delay caused by a *force*
23 *majeure*.

24 16. When an event occurs or has occurred that may delay or prevent the performance
25 of any obligation of this Consent Decree, Defendant shall notify by telephone (415-972-3988)
26 the Chief, Air Enforcement Office, Air Division of the EPA, Region IX, within seventy-two (72)
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1 hours of such event. Telephone notification shall be followed by written notification, made
2 within seven (7) days of such event. The written notification shall fully describe:

- 3 (a) the event that may delay or prevent performance;
- 4 (b) reasons for the delay, and the reasons the delay is beyond the reasonable control of
5 the Defendant;
- 6 (c) the anticipated duration of the delay;
- 7 (d) actions taken or to be taken to prevent or minimize a delay;
- 8 (e) a schedule for implementation of any measures to be taken to mitigate the effect of
9 the delay;
- 10 (f) any dependent activities and the time needed to implement any dependent activities;
11 and
- 12 (g) whether Defendant claims the event to be a *force majeure*.

13 17. Defendant's failure to comply with the notice requirements provided under this
14 Section for any delay in performance will be deemed an automatic forfeiture of its right to assert
15 that the delay was caused by a *force majeure* unless such failure to provide notice was caused
16 by a *force majeure*.

17 18. Within seven (7) days after receiving notice from Defendant pursuant to section IX,
18 EPA shall provide written notification to Defendant stating whether Defendant's request for a
19 delay is justified, and whether EPA agrees that such delay was caused by a *force majeure*.
20 EPA's failure to respond to a request for delay shall be deemed a denial of that request. If
21 Defendant disagrees with EPA's determination, it may initiate dispute resolution procedures
22 pursuant to section VIII (Dispute Resolution) of this Consent Decree.

23 **VIII. DISPUTE RESOLUTION**

24 19. If Defendant disputes any determination made by EPA under this Consent Decree
25 related to (1) a request by EPA for stipulated penalties, (2) EPA's determination related to *force*
26 *majeure*, or (3) the termination of the Consent Decree under paragraph 33, it shall send a written
27 notice to EPA and the Department of Justice outlining the nature of the dispute and requesting
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1 informal negotiations to resolve the dispute. Such period of informal negotiations shall not
2 extend beyond fifteen (15) working days from the date when the notice was sent unless the
3 parties agree otherwise.

4 20. If the informal negotiations are unsuccessful, the determination of EPA shall control,
5 unless Defendant files a motion with this Court for dispute resolution. Any such motion must
6 be filed within thirty (30) days after receipt by Defendant of a notice in writing from EPA
7 terminating informal negotiations and must be concurrently sent to DOJ and EPA. The United
8 States shall then have thirty (30) days to respond to Defendant's motion. In any such dispute
9 resolution proceeding, Defendant bears the burden of proving, by preponderance of the evidence,
10 that (a) in disputes regarding section VII (*Force Majeure*), the delay was caused by
11 circumstances beyond the reasonable control of Defendant, its contractors, and agents, all
12 reasonable measures were taken to avoid or minimize delay, and the duration of the delay was
13 reasonable under the circumstances; and (b) in disputes regarding termination of the Consent
14 Decree under paragraph 33, Defendant has satisfied all of its obligations under this Consent
15 Decree. In disputes regarding EPA's request for stipulated penalties under section V, EPA shall
16 bear the burden of proving, by preponderance of the evidence, that Defendant violated the terms
17 and conditions of the Consent Decree.

18 21. A timely motion by Defendant will not toll the accrual of stipulated penalties under
19 this Consent Decree, but payment shall be stayed pending resolution of the dispute.

20 **IX. NOTIFICATION**

21 22. Except as otherwise specifically stated, all notices and submissions from Defendant
22 to EPA required by this Consent Decree shall be sent by certified mail, express mail, or similar
23 overnight mail delivery service with return receipt requested, or delivered in person, not later
24 than the day that such notification or submission is required by this Consent Decree, and
25 addressed to:

1 Director, Air Division (AIR-1)
2 U.S. Environmental Protection Agency, Region IX
3 75 Hawthorne Street
4 San Francisco, CA 94105
5 Attn: John Brock, AIR-5

6 If the due date for a notice or report falls on a weekend day or federal or State of
7 Arizona holiday, the notice or report shall be due on the next working day. All notices and
8 reports submitted to EPA or DOJ shall refer to this Consent Decree and the date of entry of the
9 Consent Decree, and shall cite the case name, the case number, USAO No. 2005V00342, and
10 DOJ File No. 90-5-2-1-08544.

11 23. All submissions to EPA shall be signed and affirmed by a responsible official of the
12 Defendant using the following certification statement:

13 I certify under penalty of law that I have examined and am familiar with
14 the information submitted in this document and all attachments and
15 that, based on inquiry of those individuals immediately responsible for
16 obtaining the information, I certify that the information is true, accurate,
17 and complete to the best of my knowledge, information, and belief. I
18 am aware that there are significant penalties for submitting false
19 information, including the possibility of fines and imprisonment.

20 24. Notice as required by this Consent Decree shall be submitted to:

21 U.S. Department of Justice:

22 Chief, Civil Division
23 U.S. Attorney's Office
24 Two Renaissance Square
25 40 N. Central Avenue, Suite 1200
26 Phoenix, Arizona 85004-4408

27 Edward Kraemer & Sons, Inc.:

28 Tim Muller, P.E.
Vice President
Western Operations
Construction Division
1616 East Indian School Road, Suite 350
Phoenix, AZ 85016-8603

Richard W. Tobin II, Esq.
Lewis & Roca, LLP
40 North Central Avenue
Phoenix, AZ 85004-4429

1 32. This Consent Decree contains the entire agreement between the parties. This
2 Consent Decree shall not be enlarged, modified, or altered unless such modifications are made
3 in writing and approved by all parties and the Court.

4 33. This Consent Decree shall terminate according to the procedure provided in this
5 paragraph. After Defendant has complied with the requirements of paragraphs 4 and 7 and
6 section V (Stipulated Penalties) of this Consent Decree, Defendant shall provide EPA notice,
7 stating that Defendant has satisfied all obligations of the Consent Decree and believes the
8 Consent Decree can be terminated. Defendant's notice shall refer to this paragraph 33.
9 Thereafter, EPA will provide Defendant with a written response, either stating EPA's agreement
10 that the Consent Decree may be terminated, or stating EPA's determination that the Consent
11 Decree should not be terminated. If EPA fails to provide written response within sixty (60) days
12 after receiving written notice from Defendant or if EPA determines that the Consent Decree
13 should not be terminated, Defendant may initiate dispute resolution procedures pursuant to
14 section VIII (Dispute Resolution). If EPA determines that the Consent Decree may be
15 terminated, the United States shall file a motion with the Court seeking termination.

16 34. The Court shall retain jurisdiction to resolve any disputes that arise under this
17 Consent Decree.

18 35. Defendant agrees and acknowledges that final approval of this Consent Decree by
19 the United States and entry of this Consent Decree is subject to the requirements of 28 C.F.R.
20 § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register,
21 opportunity for public comment for at least thirty (30) days, and consideration by the United
22 States of any comments prior to entry of the Consent Decree by the Court. The United States
23 reserves its right to withdraw consent to this Consent Decree based on comments received during
24 the public notice period. Defendant consents to entry of this Consent Decree without further
25 notice to the Court.

1 **XI. FINAL JUDGMENT**

2 36. Upon entry by this Court, this Consent Decree shall constitute a final judgment for
3 purposes of Fed. R. Civ. P. 54 and 58.

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5 **IT IS SO ORDERED.**

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8 Dated: _____

United States District Judge

1 For the Plaintiff United States of America:

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SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environment & Natural Resources Division

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5 Dated: _____

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W. BENJAMIN FISHEROW
Deputy Section Chief
Environmental Enforcement Section

7

8

PAUL K. CHARLTON
United States Attorney
District of Arizona

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10

Dated: _____

11

SUE A. KLEIN
Assistant United States Attorney
District of Arizona

12

13

14 Dated: _____

15

WAYNE NASTRI
Regional Administrator
U.S. Environmental Protection Agency,
Region IX
San Francisco, CA 94105

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18 OF COUNSEL:

19

DAVID H. KIM
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region IX
San Francisco, CA 94105

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1 For Defendant Edward Kraemer & Sons, Inc.:

2 Edward Kraemer & Sons, Inc.

3

4 Dated: _____

5

Tim Muller, P.E.
Edward Kraemer & Sons, Inc.
1616 East Indian School Road
Suite 350
Phoenix, AZ 85016-8603

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9 Dated: _____

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Richard W. Tobin II, Esq.
Lewis & Roca, LLP
40 North Central Avenue
Phoenix, AZ 85004-4429

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1 I hereby certify that on October __, 2005, I electronically transmitted the attached document
2 to the Clerk's Office using the CM/EC. System for filing and transmittal of a Notice of
3 Electronic Filing to the following CM/ECF registrants:

4 Richard Tobin
5 LEWIS & ROCA, LLP
6 40 N. Central Avenue
7 Phoenix, AZ 85004-4429

8 s/Nancy Stotler
9 _____
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